

ST 02-33

Tax Type: Sales Tax

Issue: Exemption From Tax (Charitable or Other Exempt Types)

**STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS**

**THE DEPARTMENT OF REVENUE
OF THE STATE OF ILLINOIS,**

No: 01 ST 0000

Sales Tax Exemption

v.

ABC COALITION,

Kenneth J. Galvin

TAXPAYER

Administrative Law Judge

RECOMMENDATION FOR DISPOSITION

APPEARANCES: Ms. Jane Doe, (Executive Director) on behalf of ABC Coalition; Mr. Michael Abramovic, on behalf of the Department of Revenue of the State of Illinois.

SYNOPSIS: On August 16, 2000, ABC Coalition (hereinafter “ABC” or “applicant”) wrote to the Illinois Department of Revenue (hereinafter the “Department”) to request that the Department issue it an exemption identification number so that it could purchase tangible personal property free from the imposition of use tax as set forth in 35 ILCS 105/1 *et seq.* On August 28, 2000, the Department denied ABC’s application. On October 19, 2001, ABC protested the Department’s decision and requested a hearing, which was held on August 14, 2002, with Jane Doe, Office Manager for ABC, testifying. The sole

issue to be determined at the hearing was whether ABC qualified for an exemption identification number as “a corporation, society, association, foundation or institution organized and operated exclusively for charitable ... purposes.” 35 ILCS 105/3-5(4). Following a careful review of the evidence and testimony presented at the hearing, I recommend that ABC be granted an exemption identification number.

FINDINGS OF FACT:

1.The Department’s case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Department’s denial of exemption dated August 28, 2000. Tr. pp. 14-15; Dept. Ex. No. 1.

2.42 U.S.C. 12704 *et seq.*, (hereinafter “The National Affordable Housing Act”) passed in 1992, states that the Secretary of Housing and Urban Development (“HUD”) shall “develop the capacity of participating jurisdictions, State and local housing finance agencies, nonprofit organizations and for-profit corporations, working in partnership, to identify and meet needs for an increased supply of decent and affordable housing.” (42 U.S.C. 12781). The Secretary shall carry this out through contract with “a national or regional nonprofit organization that has a membership comprised predominantly of entities or officials of entities...” (42 U.S.C. 12783). ABC is a regional nonprofit organization receiving grant money from, *inter alia*, HUD. Tr. pp. 49-52; App. Ex. No. 2.

3.ABC’s mission is to “increase and preserve the supply of decent, affordable, accessible housing in the state of Illinois for low and moderate income

households.” ABC accomplishes this by heightening public awareness of the housing crisis in Illinois, undertaking research and development of innovative proposals to preserve and expand affordable housing, advocating for greater coordination and increased funding from all levels of government and the private sector for housing which meets the needs of low-income individuals and families, and by promoting organizing efforts at the community and neighborhood level around affordable housing units.

Tr. pp. 16-17; App. Ex. Nos. 3(b) and 14.

4.ABC is exempt from federal income taxes under Section 501(c)(3) of the Internal Revenue Code. Tr. p. 17; App. Ex. No. 3(c).

5.ABC is incorporated under the Illinois General Not For Profit Corporation Act. Tr. p. 18; App. Ex. No. 3(b).

6.ABC holds training sessions and workshops in Illinois throughout the year on affordable housing and organizational issues. In years 1998 to 2001, sessions were held in Springfield, Mt. Vernon, Belleville, Decatur, Urbana and Bloomington on such topics as low income housing tax credit financing, fundraising for community development organizations, and using tax increment financing funds to develop and preserve affordable housing. Attendance ranges from 15 to 50 people. Some sessions and workshops are free but may entail charges for meals and overnight stays. ABC members and nonmembers have received fee waivers. Tr. pp. 25-27; App. Ex. No. 11.

7.ABC publishes a manual called “Tax Increment Financing: An Organizer’s Guide.” The manual answers questions about tax increment financing (“TIF”), such as what a TIF district is, what it will do to the neighborhood, how community residents can have input into the TIF process, how TIF can be used to benefit all residents of the community, and how the community can control the TIF development so that low income residents are protected. The TIF manual was mailed to 32 people or organizations free of charge within the last two-year period. Tr. pp. 27-31; App. Ex. Nos. 12(a) and 12(c).

8.ABC sponsored workshops and presentations to educate the public about TIF and to residents in TIF districts. The meetings were open to anyone who wished to attend. In Morton Grove, several residents were being threatened with displacement from a motel where they had lived for years through the implementation of a TIF district. With ABC’s help, the residents were able to secure relocation assistance and money for moving and rental expenses. ABC has also worked with TIF’s in Hyde Park, Moline, Southeast Chicago and Rogers Park. Tr. pp. 28-29; App. Ex. No. 12(b).

9.ABC maintains a database of housing in Illinois that receives some form of subsidy, whether state or federal. Different groups use the database to research where there is affordable housing in their area. ABC provided technical assistance to 8 organizations that used the database in year 2000.

ABC members and nonmembers use this database and no fee is charged. Tr. pp. 31-32, 52-53; App. Ex. No. 13.

10. Residents throughout Illinois request services from ABC. ABC tries to hold events in different parts of Illinois so that travel time and expense is not a barrier to people wishing to attend. All meetings take place in buildings that are wheelchair accessible. ABC maintains a website that facilitates the dissemination of information to the public. Tr. pp. 33-35; App. Ex. No. 15.
11. ABC'S annual convention for year 2001 was held on November 14 and 15 in Springfield. The convention agenda included sessions on "Trends in Homelessness Prevention Funding" and "Low-income Housing Tax Credits in Illinois." The convention registration fee, which included materials and meals, was \$95 for ABC members and \$115 for nonmembers. The registration form stated "[F]inancial assistance is very limited. A scholarship form can be obtained by calling ABC..." Approximately 90 people attended the 2001 convention and 28 of these attendees, both members of ABC and nonmembers, had the conference registration fee waived because they were unable to pay. All attendees must pay for their own hotel rooms. Tr. pp. 22-25, 35-36; App. Ex. Nos. 9, 10, and 10(a).
12. ABC's Board of Directors is comprised of 13 members, all unpaid. ABC has 4 employees, with salaries ranging from \$43,210 for the executive

director to \$23,000 for the administrative assistant. Tr. pp. 37-39; App. Ex. No. 4(c).

13. ABC's 1999, Form 990, "Return of Organization Exempt from Income Tax," and "Illinois Charitable Organization Annual Report" show total revenue of \$303,656, of which 37% was from direct public support, 60% was from government grants, and 3% was from membership dues and assessments. Total expenses were \$296,783, of which salaries and wages were 36%. Tr. pp. 18-20; App. Ex. No. 8.
14. For tax year 2000, ABC had total revenues of \$272,125, of which 67% was from private foundation grants, 25% was from government grants, 3% was from membership dues with the remaining 5% coming from "special events" and individual contributions. Private grants have been received from the MacArthur Foundation, Wieboldt Foundation, Bank One, LaSalle Bank, Chicago Community Trust, Woods Fund of Chicago and Northern Trust. Tr. pp. 39-41; App. Ex. Nos. 4(a), 16.
15. ABC's bylaws state that membership in ABC shall be open to any organization which subscribes to the purposes of ABC, is not a political party or association, has a formal organizational structure, has paid dues as determined by the Board of Directors, and remains current, and is accepted by the ABC Board of Directors, pursuant to the procedures established by the membership committee. Tr. p. 18; App. Ex. No. 3(a).

16. If an organization wants to become a member of ABC, it must pay a fee based on its annual budget: \$25 if the annual budget is under \$25,000; \$100 if between \$25,000 and \$125,000; \$150 if over \$125,000. Individuals may become nonvoting members of ABC for a fee of \$35 or \$15 for “low-income” individuals. The membership application states that “[I]ndividuals and groups unable to pay membership fee may join ABC by requesting a fee waiver.” Tr. pp. 41-43; App. Ex. Nos. 5 and 6.
17. Memberships must be renewed yearly. If a member does not renew, a “Final Notice” is sent out which states that “[I]f you would like to remain a member of ABC but are having financial difficulties, call ABC and we will be glad to work something out.” Tr. pp. 43-44; App. Ex. No. 7(a).
18. In 1999, there were 82 organizational and individual members of ABC with 3 fee waivers. In 2000, there were 75 members with 2 fee waivers. Tr. pp. 45-46; App. Ex. No. 4(d).
19. On January 15, 2002, ABC passed a resolution which “formalize[d] our current policy” and states that ABC membership fee may be waived for cases of financial need, that the staff may waive membership fee upon reasonable presentation of such need, and that this information will be printed in ABC’S brochure, membership solicitations, and other appropriate publications. Tr. p. 44; App. Ex. No. 7(b).

20. ABC is currently working with the Illinois House of Representatives on the Housing Justice Now Campaign. ABC is helping to plan the meetings and coordinate testimony for 3 hearings in the Fall throughout Illinois on affordable housing needs and what the State can do to address these needs.

Tr. pp. 53-55.

CONCLUSIONS OF LAW:

An examination of the record establishes that ABC has demonstrated, by the presentation of testimony and through exhibits or argument, evidence sufficient to warrant an exemption from sales tax. Accordingly, under the reasoning given below, the determination by the Department denying the applicant a sales tax exemption number should be reversed. In support thereof, I make the following conclusions:

The applicant seeks to qualify for an exemption identification number as a “corporation, society, association, foundation or institution organized and operated exclusively for charitable...purposes[.]” 35 ILCS 105/3-5(4); 35 ILCS 120/2-5(11). The applicant bears the burden of proving “by clear and convincing” evidence that the exemption applies. Evangelical Hospitals Corp. v. Department of Revenue, 223 Ill. App. 3d 225, 231 (2d Dist.1991). It is well established that there is a presumption against exemption and that therefore, “exemptions are to be strictly construed” with any doubts concerning the applicability of the exemption “resolved in favor of taxation.” Van’s Material Co. Inc. v. Department of Revenue, 131 Ill. 2d 196 (1989).

In Methodist Old People’s Home v. Korzen, 39 Ill. 2d 149 (1968), the Illinois Supreme Court outlined several factors to be considered in assessing whether an organization is actually an institution of public charity: (1) the benefits derived are for an indefinite number of persons [for their general welfare or in some way reducing the

burdens on government]; (2) the organization has no capital, capital stock or shareholders; (3) funds are derived mainly from private and public charity, and the funds are held in trust for the objects and purposes expressed in the charter; (4) the charity is dispensed to all who need and apply for it, and does not provide gain or profit in a private sense to any person connected with it; (5) the organization does not appear to place obstacles of any character in the way of those who need and would avail themselves of the charitable benefits it dispenses. The above factors are guidelines for assessing whether an institution is a charity, but are not definitive requirements. DuPage County Board of Review v. Joint Comm'n on Accreditation of Healthcare Organizations, 274 Ill. App. 3d 461 (2d Dist. 1995).

Applying the guidelines from Methodist Old People's Home, I find that ABC has presented clear and convincing evidence that it is, in fact, a charitable organization. One of the guidelines for determining if an organization qualifies as a charity is that the benefits derived are for an indefinite number of persons, either for their general welfare or in some way reducing the burden of government. The National Affordable Housing Act authorized the Secretary of Housing and Urban Development to contract with eligible organizations, including regional nonprofit organizations having a membership comprised of entities or officials of entities, to identify and meet the needs for an increased supply of decent and affordable housing. App. Ex. No. 2. ABC is an eligible nonprofit organization, with a membership comprised of other entities and individuals. ABC receives funding from Housing and Urban Development in order to accomplish its mission of increasing and preserving the supply of decent, affordable, accessible housing in Illinois for low and moderate-income households. Tr. pp. 16-17. ABC is currently working with the Illinois House of Representatives to coordinate testimony and plan

meetings throughout Illinois on affordable housing needs and what the State can do to address these needs. Tr. pp. 53-55. These activities indicate that ABC is an integral part of the process of achieving the government-mandated burden of supplying and preserving decent, affordable housing.

Evidence presented at the hearing also indicates that ABC provides a direct benefit to an indefinite number of persons with the service it provides. ABC distributes its manual “Tax Increment Financing: An Organizer’s Guide” free of charge to anyone who asks for it. The manual was mailed to 32 individuals or organizations in the past two years. Tr. p. 30. ABC provides workshops and presentations to educate the public about TIF. ABC worked with TIF districts in Morton Grove, Hyde Park, Moline, Southeast Chicago and Rogers Park. In Morton Grove, residents being threatened with displacement from a motel in a TIF district, were helped by ABC in securing relocation assistance and money for moving and rental expenses. Tr. pp. 28-29. ABC operates a website where its documents and information are available to the public. Tr. p. 35. ABC holds training and informational sessions in different parts of Illinois so that “travel, time, and expense is not a barrier to people...” Tr. p. 33.

ABC’s also works with its membership entities by organizing efforts at the community and neighborhood level to increase the supply of affordable housing. ABC holds training sessions and workshops throughout the year in different parts of Illinois. Such topics as fundraising for community development organizations and using tax increment financing funds to develop and preserve affordable housing are discussed. Tr. pp. 25-26. ABC maintains a database of subsidized housing throughout Illinois that is used free of charge, by various organizations, to research where there is affordable housing in their area. Tr. pp. 31-32. ABC’s annual convention “is a time when people

throughout the State working on housing issues come together to learn more about housing and to network and to set an agenda for the next year.” Tr. p. 22. The annual convention, attended by both organizations and individuals including members and nonmembers, indicates further that ABC’s activities benefit an indefinite number of persons.

ABC has no capital, capital stock or shareholders. ABC’s Board of Directors is comprised of 13 members, all unpaid. ABC has four employees, with salaries ranging from \$43,210 to \$23,000. Tr. pp. 37-39. The salaries appear reasonable and indicate that ABC does not provide gain or profit in a private sense to any person connected with the organization, another guideline from Methodist Old People’s Home. In 1999, 97% of ABC’s funding came from direct support or government grants and 3% came from membership fees. Tr. pp. 18-20; App. Ex. No. 8. In 2000, 92% of ABC’s funding came from direct support or government grants and 3% came from membership fees. Tr. pp. 39-41; App. Ex. No. 4(a). Based on this financial data, I conclude that ABC’s funds are derived mainly from public and private charity.

The National Affordable Housing Act allows the Secretary of Housing and Urban Development to contract with organizations, such as ABC, that have memberships comprised of other entities. App. Ex. No. 2. Only 3% of ABC’s total funding in years 1999 and 2000 came from membership dues. App. Ex. Nos. 4(a) and 8. Membership in ABC is open to any organization which subscribes to the purposes of ABC, is not a political party or organization, pays and remains current with dues, and is accepted by the Board of Directors. Tr. p. 18. App. Ex. No. 3(a). Annual membership fees are minimal: \$25 if the organization’s annual budget is under \$25,000; \$100 if between \$25,000 and \$125,000; \$150 if over \$150,000. Individuals may join ABC for \$35 or \$15 for “low-

income” individuals. The membership application clearly states that “individuals and groups unable to pay membership fee may join ABC by requesting a fee waiver.” App. Ex. No. 6. In January, 2002, ABC passed a resolution which formalized its current policy that membership fees may be waived for cases of financial need and that this information will be printed on ABC’s membership solicitations. App. Ex. No. 7(b). Based on ABC’s minimal membership fee and prominent advertising of the fee waiver policy, I conclude that it does not place obstacles in the way of those who would avail themselves of the benefits it dispenses.

Although charging fees and rendering benefits may not destroy the charitable nature of an organization, this is only true to the extent that the organization also admits persons who need and seek the benefits offered but are unable to pay. Small v. Pangle, 60 Ill. 2d 510 (1975). In 1999, ABC had 82 members and 3 fee waivers. In 2000, there were 75 members with 2 waivers. App. Ex. No. 4(d). Moreover, approximately 90 people attended ABC’s annual convention for year 2001, and 29 of these attendees, both members and non-members, received conference registration fee waivers because they were unable to pay. App. Ex. No. 10(a). The registration form stated that a scholarship could be obtained by calling ABC. App. Ex. No. 9. This evidence shows that ABC is meeting the guideline from Methodist Old People’s Home that charity be dispensed to all who need and apply for it.

Based on the testimony and evidence presented at the hearing, I conclude that ABC qualifies as a charitable organization and I recommend that the Department’s determination denying the applicant a sales tax exemption number be reversed, and that ABC Coalition be granted a sales tax identification number.

ENTER:

Kenneth J. Galvin

October 31, 2002